



The Attorney General of Texas

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MARK WHITE
Attorney General

Supreme Court Building
P.O. Box 12548
Austin, TX. 78711
512/475-2501
telex 910/874-1367
telecopier 512/475-0266

607 Main St., Suite 1400
Dallas, TX. 75201
514/742-8944

824 Alberta Ave., Suite 160
El Paso, TX. 79905
915/533-3484

220 Dallas Ave., Suite 202
Houston, TX. 77002
713/650-0666

806 Broadway, Suite 312
Aubrock, TX. 79401
806/747-5238

309 N. Tenth, Suite B
McAllen, TX. 78501
512/682-4547

200 Main Plaza, Suite 400
San Antonio, TX. 78205
512/225-4191

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Honorable Bob Bullock
Comptroller of Public Accounts
L.B.J. State Office Building
Austin, Texas 78774

Open Records Decision No. 300

Re: Whether names of corporations filing franchise tax returns under the county assessed value method of taxation are available under the Open Records Act

Dear Mr. Bullock:

You ask whether a list of all corporations that filed franchise tax returns under the county assessed value methods of taxation, see V.T.C.S. Taxation-General, article 12.01, for the years 1976-1980 is subject to disclosure under the Open Records Act, article 6252-17a, V.T.C.S. You contend that such a list should be treated as confidential under section 3(a)(1) of the Open Records Act, as information deemed confidential by statute.

Franchise tax provisions are contained in articles 12.01 et. seq., Taxation-General, V.T.C.S. Article 12.01 provides in pertinent part as follows:

(1) Except as otherwise provided in this chapter, every domestic and foreign corporation heretofore or hereafter chartered or authorized to do business in Texas or doing business in Texas shall file such reports as are required by Articles 12.08 and 12.19 and pay to the Comptroller a franchise tax... (Emphasis added).

Article 12.10 provides in relevant part that:

(a) Except information set forth in liens filed pursuant to this Title, all information secured, derived or obtained from any record, instrument, or copy thereof, required to be furnished under the terms of this Chapter, shall be and shall remain confidential and not open to public inspection. All information secured, derived or obtained during the course of an examination of

the taxpayer's books, records, papers, officers or employees, including the business affairs, operations, profits, losses or expenditures of the taxpayer, shall be and shall remain confidential and not open to public inspection.

However, a bona fide stockholder owning one or more shares of outstanding stock of any corporation may examine and receive copies of the reports made under Articles 12.08 and 12.09 of this Chapter upon presentation of evidence of such ownership to the Comptroller. Any interested person may also be furnished the names, titles, and mailing addresses of the officers, directors, and agents for service of process, and the location of the principal office and place of business, and ownership required to be filed by Article 12.12 of this Chapter, of any corporation filing a franchise tax report. (Emphasis added).

....

Article 12.10A provides that:

If the Secretary of State or any other State officer or employee, or any other person, having access to any franchise tax report filed as provided by law, including any shareholder who is permitted to examine the report of any corporation as provided in Section 2 hereof, shall make known in any manner whatever not provided by law the amount or source of income, profits, losses, expenditures, or any particulars thereof, or any other information pertaining to the financial condition of the corporation set forth, or disclosed in such report, he shall be punished by a fine not exceeding... (\$1,000.00) or confinement in jail for not exceeding one year, or both. (Emphasis added).

You state in your letter to this office that the names of corporations that have paid franchise tax are a matter of public record. This is clearly true. You contend, however, that "to limit the list to those corporations exercising a specific reporting option would be to disclose information only obtainable from the franchise tax return."

Article 12.01 requires corporations to pay a franchise tax based on whichever of the following yields the greatest tax:

(a) Basic Tax. ... (\$4.25) per \$1,000 or fractional part thereof applied to that portion of the sum of the stated capital, surplus, and undivided profits the sum of which for the purposes of this chapter is hereafter referred to as 'taxable capital,' allocable to Texas in accordance with Article 12.02....

(b) ... (\$4.25) per \$1,000 or fractional part thereof applied to the assessed value for county ad valorem tax purposes of the real and personal property owned by the corporation in this state; or

(c) ... (\$55).

With respect to this provision, you state as follows:

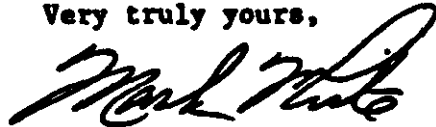
While the county assessed value of property owned by a corporation could be determined by an examination of the tax rolls of all of the counties of the state, which is public information, you could not thereby determine whether that amount was larger or smaller than the taxable capital and surplus of the corporation. With the knowledge that a corporation was paying franchise tax on the property basis, one could establish a maximum figure for taxable capital and surplus. Such information is clearly not subject to disclosure.

We agree with your contentions. In our opinion, information must clearly fall in either of the two specific categories described in the second paragraph of article 12.10(a), V.T.C.S. in order to be outside the scope of the first paragraph thereof. Under the second paragraph, an "interested party" may obtain certain neutral, directory information pertaining to all corporations that filed franchise tax returns or to a particular corporation that did so. But we do not believe the legislature intended for those persons to be able to obtain the kind of list you describe, because the very fact that a particular corporation is on that list will necessarily reveal certain information about the financial affairs and status of that corporation. This information is clearly not the sort of directory information described in the second paragraph of article 12.10(a), but can only be characterized as information embraced by the first paragraph thereof.

The legislature obviously did not intend for the public to learn particulars concerning the financial affairs of corporations that file

franchise tax returns. For this reason, the exceptions it carved out in the second paragraph of article 12.10(a) are quite limited in scope. To permit an individual to obtain the kind of list you describe would be to enable him to circumvent the confidentiality provisions of article 12.10(a), and thereby gain access to just the sort of information that the legislature sought to except from disclosure. We therefore conclude that such a list need not be made public. See also Attorney General Opinion Nos. H-661 (1975); H-223 (1974); M-388 (1969); M-295 (1968); O-6745 (1945).

Very truly yours,



MARK WHITE
Attorney General of Texas

JOHN W. FAINTER, JR.
First Assistant Attorney General

RICHARD E. GRAY III
Executive Assistant Attorney General

Prepared by Jon Bible
Assistant Attorney General

APPROVED:
OPINION COMMITTEE

Susan L. Garrison, Chairman
Jon Bible
Walter Davis
Rick Gilpin
Jim Moellinger
Bruce Youngblood